IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 5TH SEPTEMBER 2007 / 14TH BHADRA 1929

MFA.No. 447 of 2001()

WCC.36/1998 of W.C.C., KANNUR
.....

APPELLANT:

NEW INDIA ASSURANCE COMPANY LTD.,
BRANCH OFFICE, M.G.ROAD, MUVATTUPUZHA,
REPRESENTED BY THE DY.MANAGER, REGIONAL OFFICE,
KOCHI.

BY ADV. SRI.RAJAN P.KALIYATH

RESPONDENTS:
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1. K.CHANDRAVATHY AMMA, W/O.A.KUNHAMBU NAIR,
DOOR NO.B.P. VI/416, KALKODAN VETTIL, MALOM VILLAGE,
P.O.CHULLY, PARAPPA, HOSDURG.

2. A.KUNHAMBU NAIR, ATHIYODAN HOUSE,
MALOM VILLAGE, P.O.CHULLY, HOSDURG.

BY ADV. SRI.M.SASINDRAN

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 05/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP.NO.3906 OF 2001 IN MFA.447 OF 2001:

DISMISSED.

5.9.2007

Sd/-
J.B.KOSHY, JUDGE

Sd/-
K.HEMA, JUDGE

/TRUE COPY/

PA TO JUDGE

J.B.KOSHY & K.HEMA,JJ.

M.F.A.NO. 447 OF 20O1

Dated this the 5th day of September, 2007

JUDGMENT

Koshy, J.

This appeal is filed by the Insurance Company against the award of the Commissioner for Workmen's Compensation, Kannur under Section 30 of the Workmen's Compensation Act. The mother of one K.V.Balakrishnan filed an application under Section 22 of the Workmen's Compensation Act contending that while K.V.Balakrishnan was employed as a driver in the jeep, the accident occurred while driving the vehicle and sustained personal injuried and he died on the way to the hospital. He was 35 years of age and was getting monthly income of Rs.2,000/- at the time of accident. The Tribunal accepted the contention and compensation was awarded as follows:

$$\frac{2000 \times 50 \times 197.06}{100} = \text{Rs.1,97,060.00}$$

2. Three contentions are raised by the Insurance Company. First contention is that the deceased was not a workman under the

Workmen's Compensation Act, even though the coverage of the policy was admitted. The fact that the accident occurred while the deceased was driving the vehicle is not disputed. In the above circumstances, the contention that he was not a workman cannot be accepted, as the accident occurred while he was driving the vehicle. The opposite party-I admitted the ownership of the vehicle. The deceased was working under opposite party-I and there was an employer employee relationship.

3. The second contention is against fixing of Rs.2,000/- as monthly income of the deceased. The deceased was a driver of the jeep and he was a professional driver. Fixing of Rs.2,000/- as the monthly income of the deceased cannot be taken to be excessive. Hence this fact is not a substantial question of law.

4. The third contention is with regard to granting of interest. The Tribunal granted interest at the rate of 12% per annum from the date of occurrence of the accident to the date of the order. Thus, the total amount arrived was Rs.3,19,237/-. On that amount again 12% interest was asked to be paid till the date of payment. That directin will amount to pay interest over interest. In the circumstances, we are of opinion that the Insurance Company is liable to deposit an amount of Rs.1,97,060/- with 12% interest per annum from the date of accident till the date of deposit.

5. The contention of the Insurance Company that mother is not the dependent of the deceased also cannot be accepted. The mother can only expects dependency from the son and as per the rules, the Commissioner will disburse the amount only to the dependents.

The appeal is allowed partly.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

vgs.

J.B.KOSHY & K.HEMA, J.

M.F.A.NO. 447 OF 2001

JUDGMENT

5.9.2007